BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of:	)	
	)	
Amendment of the Commission's Rules	)	
Concerning Maritime Communications	)	PR Docket No. 92-257
	)	
Petition for Rule Making Filed by Regionet	)	RM-9664
Wireless Licensee, LLC	)	
	)	

To: The Commission

OPPOSITION OF REGIONET LICENSEE, LLC TO PETITION OF WARREN C. HAVENS FOR RECONSIDERATION

Regionet Wireless Licensee, LLC ("Regionet") respectfully submits this Opposition to the petition of Warren C. Havens ("Havens") seeking clarification or, in the alternative, reconsideration, of certain provisions in the Fourth Report and Order ("4th R&O") issued by the Commission in the above-captioned rule making.[1]

I. THE JANUARY 16, 2001 HAVENS PETITION MUST BE DISMISSED AS UNTIMELY FILED

As reflected in the FCC's Public Notice Report No. 2475, the petition filed on January 16, 2001 was untimely. Federal Register publication of the 4th R&O was given on December 13, 2000, 65 Fed. Reg. 77821. Consequently, the due date for reconsideration petitions was January

[1] Public notice of the Havens petition for reconsideration was given by the Commission on April 9, 2001, 66 Fed. Reg. 18474; *see also* Public Notice Report No. 2475 (April 2, 2001). The public notice report references two petitions filed by Havens, one dated January 8, 2001 regarding reconsideration or waiver of the Interim Order regarding suspension of the processing of applications, and one filed January 16, 2001. Regionet filed a responsive pleading to the January 8 petition on January 18, 2001.

12, 2001. *See* 47 C.F.R. §§1.4(b)(1). Section 405 of the Communications Act, 47 U.S.C. §405, requires that petitions for reconsideration "must be filed" within 30 days of public notice.[2] Havens' petition having been untimely filed, it must be summarily dismissed.[3]

II. FILL-IN STATIONS

Havens seeks clarification, or alternatively reconsideration, with regard to the rule adopted by the Commission concerning fill-in stations.[4] By and large, the concerns expressed by Havens with regard to the fill-in rule provisions are incomprehensible. First, Havens questions the meaning of the term "existing system" in paragraph 12 of the 4th R&O. The meaning of the rule adopted at §80.475(a)(1) is perfectly clear, and no change or clarification is warranted.

Second, Havens addresses the scope of the fill-in authority, and maintains that different fill-in authority standards should be utilized for contours over land and for contours over open

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[2] *See e.g., Authority to Operate a Multiple Address System Station in the Area of Southfield, Michigan*, DA01-589 (2001) (holding that 30-day filing requirement of Section 405(a) of the Act is applicable even if the petitioner for reconsideration is filed only one day late (citing *Panola Broadcasting Co.*, Memorandum Opinion and Order, 68 FCC 2d 533 (1978)); *Angell Communications, Inc.*, FCC 13 FCC Rcd 14061 (1998) (holding that when "the time for filing a petition for reconsideration is prescribed by statute, the Commission...may extend in the case of extraordinary or unusual circumstances or FCC's failure to give adequate notice of the action taken.")

[3] Regionet further notes that the January 16 petition for reconsideration, as it currently appears in the Commission's records, is significantly different from the petition as it appeared immediately following the close of the 30 day statutory period for filing petition for reconsideration of Commission actions. The version which originally appeared consisted exclusively of a run-on and indecipherable mixture of letters and symbols; the current text is understood to have been submitted some weeks later. A covering memorandum to the January 16 submission complained about an inability to achieve a successful electronic filing of the petition. *See* Attachment A hereto, which includes a sample of the matter submitted. Ignoring, *arguendo*, the *per se* late nature of the filing, Havens seems to be requesting that his incomprehensible filing be accepted, or alternatively that a later substitute be accepted. Unless, however, the Commission accepts responsibility for the failure of its electronic filing system, by operation or design, to accept the Havens petition in readable format (assuming it actually was submitted in English and not in gibberish), it is respectively submitted that §405 of the Act establishes an absolute bar to consideration of late-filed petitions for reconsideration. With the 4th R&O having been released November 16, 2000, Havens certainly had ample time to assure that any petition for reconsideration he desired to submit would be timely received. Havens elected to wait, literally, until [after] the "11th hour" to file his petition, and then to use the electronic filing process. His complaint about lack of instructions is contradicted by the information published by the Commission and appearing on its web site. Havens' inability to comply with the electronic filing process does not constitute good cause to accept his petition more than 30 days after the Federal Register public notice date.

[4] 4th R&O at ¶12; 47 C.F.R. §475(a)(1) and (b).

sea areas. Again, this issue is addressed at §80.475(a)(1); and different standards do apply.[5] Havens further argues that the contour over land for fill-in purposes should be defined according to the engineering standards *he* adopted for use in his applications. In doing so, Havens continues to spew forth his theories, based upon nothing more than his own self-proclaimed expertise (notwithstanding he has neither constructed nor operated a single AMTS system or even station), which theories have been expounded upon *ad nauseam* in his prior pleadings, concerning the utilization by WATERCOM and Regionet of 17 dBu service contours. Whatever the reason for the self-serving, uninformed opinion of Havens with regard to AMTS service, the WATERCOM (now Regionet) inland waterways system has been successfully operating for approximately 15 years, providing continuous coverage along the Illinois, Ohio and Mississippi Rivers and the Gulf Intracoastal Waterway, with site selection predicated on 17 dBu service contours.[6]

Havens arguments must fail for two additional reasons. First, establishing engineering standards on an *ex post facto* basis for licensed stations is beyond the scope of this rule making. Whether to use the licensed contours or a service area to be prescribed by a new rule was not an issue raised in the Second Further Notice of Proposed Rulemaking. Accordingly, to adopt the Havens proposal would be a violation of the Administrative Procedure Act, 5 U.S.C. §553.

Second, the Commission acknowledges in the Third Further Notice of Proposed Rulemaking that the current rules do not define reliable or protected service areas.[7] As the

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[5] Havens' inability to understand the Commission's regulations may raise a question concerning his competency to be a Commission licensee.

[6] The WATERCOM engineering team was lead by Raymond E. Spence, former Chief Engineer of the Federal Communications Commission. Mr. Spence's credentials are unimpeachable, and his engineering design judgments have well served the test of time, regardless of the histrionics of Havens.

[7] Third FNPRM at ¶35.

Commission recognizes, applicants have used both the VHF maritime standard as well as the 220 MHz standard.[8] Licenses have been granted on the basis of the applications submitted, and in no case has the Commission imposed a condition limiting the reliable or protected service contour of those who utilized 17 dBu for their application engineering to a 38 dBu or other standard. For the Commission now to limit AMTS licensees to a service contour less than that for which they have been authorized, at a minimum, would be inconsistent with practice and precedent.

As the Commission over the past several years has abandoned site-based licensing in favor of geographic area licensing, interference protection consistently has been granted to incumbent licensees based on their existing service contours. By way of example, and as explained below, such protection has been granted to incumbent 900 MHz licensees, incumbent paging licensees, incumbents in both the upper 200 channels and lower 230 channels in the 800 MHz band, and Phase I licensees in the 220-222 MHz band. Thus, the Commission has carefully protected the areas that incumbent licensees have sought to serve.

In the CMRS Third Report and Order, the Commission held that incumbent 900 MHz SMR systems are entitled to full co-channel interference protection for existing facilities.[9] Any expansion beyond existing service areas was disallowed absent the consent of the MTA licensee for the relevant channels. In the 900 MHz Second Report and Order, the existing service area of an incumbent system was defined by its originally-licensed 40 dBu signal strength contour.[10]

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[8] *Id.* at n.142.

[9] *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool("SMRS")*, Third Report and Order, 9 FCC Rcd 7988, at ¶118 (1994).

[10] *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool; Implementation of Section 309(j) of the Communications Act – Competitive Bidding; Implementation of*
(continued)

The Commission's stated objective was "to allow incumbents to continue existing operations without harmful interference and to give them flexibility to modify or augment their systems so long as they do not encroach on the MTA licensee's operations."[11] Incumbents therefore were allowed to add new transmitters in their existing service area to fill in dead spots, for example, or to otherwise increase capacity within their service area, as long as their original 40 dBu signal strength contour was not expanded.[12] In order to preserve the originally-licensed 40 dBu contour, MTA licensees were required to protect incumbent SMR systems either by locating their stations at least 70 miles from incumbent facilities, by complying with the co-channel separation standards of the "short-spacing" rule if they want to locate closer than 70 miles, or by negotiating a shorter distance with the incumbent.[13] The Commission also granted protection for the secondary authorizations of incumbent 900 MHz licensees, which had been granted in order to link the incumbent's facilities in different markets. The Commission reasoned that "it would be unduly disruptive to existing 900 MHz operations to require incumbent licensees to discontinue operation at these sites."[14]

The Commission afforded similar protection to incumbent paging licensees. When the Commission adopted rules in 1997 to transition from site-based licensing to geographic area licensing for exclusive, non-nationwide paging channels, incumbents were protected based on

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Sections 3(n) and 322 of the Communications Act, Second Report and Order and Second Further Notice of Proposed Rulemaking, 10 FCC Rcd 6884, at ¶46 (1995).

[11] *Id.* at ¶47.

[12] *Id.*

[13] *Id.* at ¶44.

[14] *SMRS Third Report and Order*, at ¶119.

their existing service contours.[15] Accordingly, incumbent paging licensees were permitted to operate under their existing authorizations with full protection from co-channel interference, and permitted to add or modify sites without filing site-specific applications, as long as their existing contours were not expanded.[16] The Commission further granted incumbent paging licensees the choice of operating under existing authorizations or trading in their site-specific licenses for a single system-wide license covering all of the interference contours around each of the incumbents' contiguous sites operating on the same channel.[17]

Following the pattern established in the *CMRS Third Report and Order*, and consistent with its rules for paging licenses, the Commission retained similar co-channel protection rules based on existing service contours to protect incumbents in both the upper 200 channels in the 800 MHz band,[18] and in the lower 230 channels,[19] from interference by geographic area licensees.

In the *220 MHz Third Report and Order*, Phase II licensees in the 220-222 MHz band were required to protect the predicted 38 dBuV/m service contour of the base stations of co-channel Phase I licensees.[20] The predicted 38 dBuV/m contour of the Phase I licensees was

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[15] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems; and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 2732, ¶57 (1997).

[16] *Id.* at ¶¶57-58.

[17] *Id.* at ¶58.

[18] *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, First Report and Order,* Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463, at ¶92 (1995).

[19] *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; Implementation of Sections 3(n) and 322 of the Communications Act – Regulatory Treatment of Mobile Services; Implementation of Section 309(j) of he Communications Act – Competitive Bidding*, Second *Report and Order*, 12 FCC Rcd 19079, at ¶75 (1997).

[20] *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, Third Report and Order, Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, at ¶173 (1997).

calculated based on the licensee's authorized effective radiated power ("ERP") and antenna height-above-average-terrain ("HAAT"), not on the maximum allowable ERP and HAAT provided for in the 220-222 MHz rules.[21] Licensees operating at a lower ERP were required to modify their authorizations to reflect the lower ERP.[22] The Commission reasoned that "[i]f we protect Phase I licensees beyond the predicted 38 dBu contour associated with their initially authorized height and power, then these licensees would be protected beyond the area that they had sought to serve."[23] The Commission's policy therefore is clear: it consistently has protected incumbent licensees to the extent of the areas they sought to serve. A different standard should not apply with regard to AMTS fill-in authority.

Third, Havens proposes a "Havens Exception" to the limitation of fill-in authority over land to serving only those areas within existing contours. Havens proposes that contour extension be permitted by fill-in stations over any "land area whose usage by persons is minimal," whatever that latter phrase means. It is the height of hypocrisy for Havens to argue -- particularly within the same pleading-- on the one hand that licensees should not be permitted to establish fill-in sites within their licensed service areas because their station contours differ from those he has chosen, while on the other hand contenting that he should be allowed flexibility to extend his contours by fill-in stations to additional land areas. Indeed, with regard to "Fixed Services" Havens argues that "A vague rule providing benefits can be worse than a prohibition . . ."[24] Perhaps the distinction between the Havens Exception and the Commission's rules is that vague rules are fine when they serve Havens' purposes. In any event, the change

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[21] *Id.* at ¶174.

[22] *Id.*

[23] *Id.*

[24] Petition at n. 10.

proposed by Havens is wholly antithetical to the licensing freeze and to the Commission's intent to auction AMTS licenses on a geographic service basis. To the extent Havens wishes to increase his service contours, he can do so through acquisition of those service areas at auction.

III. FIXED SERVICES AND FIXED OR HYBRID SERVICES

Havens' naked request for clarification with regard to the provisions for fixed services and fixed or hybrid services warrants no response, or change in policy, from the Commission. The meanings of the terminology utilized by the Commission are clear, particularly to those who have a communications background. Having failed to provide any explanation of why the rules adopted lack clarity, there is no basis for Regionet to address Havens' apparent misperceptions, or for the Commission to elaborate upon rule provisions whose alleged lack of clarity has not been explained.

IV. MODULATION AND CHANNELIZATION

Havens requests authority to use "any amount of its licensed spectrum for uplinks or downlinks, whether in symmetrical pairs or not . . ." The terms "uplinks" and "downlinks" are commonly understood in the communications industry to refer to satellite service communications paths.[25] Again, like other elements of the petition for reconsideration, this concept was not included in the Second FNPRM, and consequently is beyond the scope of reconsideration. Substantively, and particularly for downlinks from satellites, said concept is totally without merit. Terrestrial system allocations cannot be utilized for satellite downlinks without causing massive interference to incumbent AMTS licensees, who are located on both

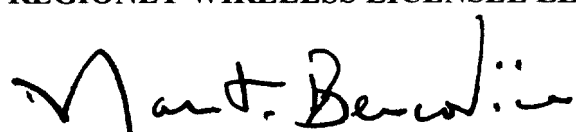
[25] While "uplink" and "downlink" are not specifically defined in the FCC's rules, the rules are filled with numerous citations to these terms—in the context of satellite service. *See e.g.*, 47 C.F.R. §§1.1307(e)(4), 2.106 note S5.541a, and 25.138(a). *See also* "Telecom Lingo Guide," The Aquilian Co., Washington, D.C. (1998).

coasts of the United States, the Inland Waterways network and the Great Lakes, as well as to the operations of new geographic area licensees. This concept can only be characterized as delusional in nature.

WHEREFORE, THE PREMISES CONSIDERED, Regionet Wireless Licensee, LLC respectfully urges the Federal Communications Commission to REJECT or otherwise DENY the petition for reconsideration of Warren C. Havens regarding the AMTS fill-in rules and other issues.

Respectfully Submitted,

REGIONET WIRELESS LICENSEE LLC



Martin W. Bercovici
Thomas E. Magee
Keller and Heckman LLP
1001 G Street, NW, Suite 500 West
Washington, D.C. 20001
(202) 434-4144

Its Attorneys

April 24, 2001

Attached is the Petition.
Also, this electronic filing system is not user-friendly as it should be and could easily be.
Document types are not listed. No instruction on how to attached files.

It did not work with my older version of Explorer, and I had to load a version of Netscape
just to access this filing system web page. Then the requirement to use ASCI, which I
no nothing about-- using Workpad, etc. Far to complicated. Thus, when I accessed the FCC
web site tonight to send in the Attached Petition by midnight, due to these difficulties
(which no commercial web site would inflict upon customers), I missed the deadline.

I thus request waiver of the deadline and acceptance as timely filed of the attached Petition.

- Warren C. Havens

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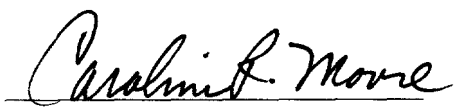
CERTIFICATE OF SERVICE

I, Carolina R. Moore, do hereby certify that on this 24th day of April, 2001, have caused a copy of the foregoing "OPPOSITION OF REGIONET LICENSEE LLC TO PETITION OF WARREN C. HAVENS FOR PETITION OF RECONSIDERATION" in PR Docket No. 92-257 to be served by first class mail, postage paid, upon:

Warren C. Havens
2509 Stuart Street
Berkeley, CA 94705

Michele Farquhar
Ronnie London
Hogan & Hartson
555 13th Street, NW
Washington, DC 20004-1109



CAROLINA R. MOORE